STATE GOVERNMENT OF SELANGOR & ANOR

v.

MURTINI KASMAN & ORS

COURT OF APPEAL, PUTRAJAYA
HISHAMUDIN MOHD YUNUS JCA
ABDUL AZIZ RAHIM JCA
MOHAMAD ARIFF YUSOF JCA
[CIVIL APPEAL NO: B-01(IM)(NCVC)-74-02-2013]
5 MARCH 2014

ELECTION: *Campaign - Manifesto - Political party issued campaign manifesto that single mothers in Selangor would receive allowance - Manifesto promise not fulfilled when political party became State Government - Claim for allowance by single mothers in Selangor four years later - Whether State Government bound by election manifesto - Whether claim time-barred - Whether State Government and Chief Minister of Selangor protected by provisions under Public Authorities Protection Act 1948 - Whether there was legitimate expectation by single mothers in Selangor*

LIMITATION: *Public authorities - When limitation began to run - Political party issued campaign manifesto that single mothers in Selangor would receive allowance - Manifesto promise not fulfilled when political party became State Government - Claim for allowance by single mothers in Selangor four years later - Whether claim time-barred - Public Authorities Protection Act 1948, s. 2(a)*

During the 2008 General Election, the Pakatan Rakyat coalition ('Pakatan Rakyat') issued a campaign manifesto that in the event Pakatan Rakyat were to be elected in Selangor, the State Government of Selangor ('the State Government') would give an allowance to every single mother in Selangor ('the allowance'). However, upon being voted to power, the State Government did not introduce such allowance scheme. In 2012, the respondents comprising single mothers in Selangor, filed a suit in the High Court against the State Government and the Chief Minister of Selangor ('the appellants') on the ground that the latter failed to honour its election manifesto. The respondents sought (i) a declaration that they were entitled to the allowance; and (ii) an

order to compel the State Government to implement a scheme that provides for single mothers in Selangor of 18 years and above, a minimum allowance of RM100 per month. The appellants filed an application pursuant to O. 18 r. 19(1) of the Rules of Court 2012 ('ROC') to strike out the respondents' statement of claim on the ground that it was an abuse of the process of court. The appellants argued that (i) the State Government was not bound by the election manifesto; and (ii) any claim against the State Government pursuant to the manifesto was time-barred by reason of s. 2(a) of the Public Authorities Protection Act 1948 ('PAPA') which provides that any action against a public authority must be made within 36 months of the default claimed against. The High Court dismissed the appellants' application and held that (i) the respondents had a reasonable cause of action, which was legitimate expectation, against the appellants; and (ii) the appellants were not protected by PAPA since the second appellant only announced that single mothers would not be given any allowance in September 2012 and time began to run only from the date of the announcement.

Held (allowing appeal with costs):
Per Hishamudin Mohd Yunus JCA delivering the judgment of the court:

(1) A government should not be bound by an election manifesto. The obligation to honour an election promise, must at best, be only a moral obligation. A manifesto contains promises by a political party made during the campaign period prior to an election in order to attract votes. They are not solemn promises or representations made by a government. A political party and the government are two different legal entities and they remain so, notwithstanding that the political party that made the promise in its manifesto wins the election and eventually forms the government. (para 14)

(2) There was no room for the doctrine of legitimate expectation to be considered because, in the first place, it was not in dispute that there was never any representation made by the State Government. Furthermore, due to the lateness of filing the writ, limitation has set in by reason of s. 2(a) of the PAPA. In any case, it was not pleaded in the statement of claim, nor was there any evidence that the second appellant

made an announcement in September 2012 to the effect that the State Government would not be implementing any financial aid scheme for single mothers. (paras 19 & 20)

Bahasa Malaysia *Translation Of Headnotes*

Semasa Pilihanraya Umum 2008, gabungan ('Pakatan Rakyat') Pakatan Rakyat telah mengeluarkan manifesto kempen bahawa sekiranya ia dipilih di Selangor, Kerajaan Negeri Selangor ('Kerajaan Negeri') akan memberi elaun kepada setiap ibu tunggal di Selangor ('elaun'). Walau bagaimanapun, setelah diberi kuasa, Kerajaan Negeri tidak memperkenalkan skim elaun sedemikian. Pada 2012, responden-responden yang terdiri daripada ibu-ibu tunggal di Selangor, memfailkan guaman di Mahkamah Tinggi terhadap Kerajaan Negeri dan Menteri Besar Selangor ('perayu-perayu') atas alasan bahawa perayu-perayu gagal mengotakan manifesto pilihanraya. Responden-responden memohon (i) deklarasi bahawa mereka layak mendapat elaun; dan (ii) satu perintah untuk menggesa Kerajaan Negeri melaksanakan satu skim yang memperuntukkan, bagi ibu-ibu tunggal di Selangor yang berumur 18 tahun ke atas, elaun minimum sebanyak RM100 sebulan. Perayu-perayu memfailkan permohonan untuk membatalkan penyataan tuntutan responden-responden atas alasan bahawa ia adalah penyalahgunaan proses mahkamah. Perayu-perayu menghujahkan bahawa (i) Kerajaan Negeri tidak terikat dengan manifesto pilihanraya; dan (ii) sebarang tuntutan terhadap Kerajaan Negeri berkenaan manifesto terhalang oleh had masa oleh sebab s. 2(a) Akta Perlindungan Pihak Berkuasa Awam 1948 ('APPBA') yang memperuntukkan bahawa sebarang tindakan yang dibuat terhadap pihak berkuasa awam mestilah dibuat dalam masa 36 bulan daripada kegagalan yang dituntut. Mahkamah Tinggi menolak permohonan perayu-perayu dan memutuskan bahawa (i) responden-responden mempunyai kausa tindakan, iaitu harapan yang sah, terhadap perayu-perayu; dan (ii) perayu-perayu tidak dilindungi oleh APPBA kerana perayu kedua hanya mengumumkan bahawa ibu-ibu tunggal tidak akan menerima elaun pada September 2012 dan masa hanya bermula dari tarikh pengumuman.

Diputuskan (membenarkan rayuan dengan kos):
Oleh Hishamudin Mohd Yunus HMR menyampaikan penghakiman mahkamah:

(1) Kerajaan tidak sepatutnya terikat dengan manifesto pilihanraya. Kewajipan untuk mengotakan janji pilihanraya, mestilah sebaiknya, menjadi satu kewajipan moral. Manifesto mengandungi janji-janji oleh parti politik yang dibuat semasa tempoh berkempen sebelum pilihanraya untuk memancing undi. Ia bukanlah janji atau representasi penuh yang dibuat oleh kerajaan. Sebuah parti politik dan kerajaan adalah dua entiti perundangan yang berbeza dan keduanya kekal begitu, tanpa mengira sama ada parti politik yang membuat janji dalam manifestonya menang dan akhirnya membentuk kerajaan.

(2) Tiada ruang untuk mempertimbangkan harapan yang sah kerana, dari awal lagi, tidak dipertikaikan bahawa tiada reprentasi yang dibuat oleh Kerajaan Negeri. Tambahan lagi, akibat kelewatan memfailkan writ, had masa telah bermula atas sebab s. 2(a) APPBA. Dalam apa jua keadaan, tidak diplidkan dalam penyataan tuntutan mahupun terdapat sebarang keterangan bahawa perayu kedua membuat pengumuman pada September 2012 bahawa Kerajaan Negeri tidak akan melaksanakan sebarang skim bantuan kewangan bagi ibu-ibu tunggal.

Case(s) referred to:
Bromley London Borough Council v. Greater London Council [1982] 1 All ER 129 ***(foll)***

Legislation referred to:
Public Authorities Protection Act 1948, s. 2(a)
Rules of Court 2012, O. 18 r. 19(1)

For the appellants - Vishnukumar (Salim Bashir with him); M/s Salim Bashir & Ruswiza & Co
For the respondents - Walter Pereira (Izyan Darlina & T Geetha with him); M/s Kamarudin & Partners

[Appeal from High Court, Shah Alam; Civil Suit No: 21NCVC-199-11-2012]

Reported by Najib Tamby

A

JUDGMENT

Hishamudin Mohd Yunus JCA:

[1] This appeal is against the decision of the learned High Court Judge of Shah Alam of 23 January 2013. The learned High Court Judge had dismissed a striking out application by the appellants pursuant to O. 18 r. 19(1) of the Rules of Court 2012 on the grounds that the respondents' statement of claim is an abuse of the process of the court.

[2] On 13 May 2013, we, unanimously, allowed the appeal with costs; and we set aside the order of the High Court.

[3] We now give our grounds.

[4] The following are the essential facts of the case.

[5] During the campaign period for the 2008 General Election, the Pakatan Rakyat coalition (consisting of three political parties, namely, the People's Justice Party (Parti Keadilan Rakyat), the Democratic Action Party (DAP) and the Pan-Malaysian Islamic Party (PAS)) issued a campaign manifesto stating that in the event the Pakatan Rakyat coalition were to be elected to power in the State of Selangor, the State Government of Selangor would give an allowance to every single mother in the State of Selangor. The particulars as to the nature of the allowance (for example, the amount of the allowance, the frequency and the criteria for the entitlement to such allowance), however, are not stated in the statement of claim.

[6] The General Election took place on 8 March 2008.

[7] As events turned out, the Pakatan Rakyat coalition, in the 2008 General Election, was voted to power in the State of Selangor. The second appellant, YAB Tan Sri Khalid Ibrahim, of the People's Justice Party (Parti Keadilan Rakyat) was appointed the Menteri Besar (Chief Minister) of the State of Selangor.

[8] However, after the 2008 General Election, the State Government of Selangor did not introduce any scheme in the State of Selangor providing allowance to single mothers.

[9] More than four years later, that is, on 23 November 2012, the 2020 respondents (the plaintiffs at the High Court), claiming to be single mothers in the State of Selangor, filed a suit against the State Government of Selangor alleging that the State Government of Selangor had failed to honour its election manifesto that promised to give every single mother in the State of Selangor a single mother allowance. The respondents seek a declaration that they, as single mothers in the State of Selangor, are entitled to be given a single mother allowance by reason of the Pakatan Rakyat coalition's election manifesto. They also seek an order to compel the State Government of Selangor to implement a scheme that provides for every single mother in the State of Selangor, of 18 years and above, a minimum single mother allowance of RM100 per month.

[10] On 12 December 2012 the appellants (the defendants at the High Court) filed an application pursuant to O. 18 r. 19(1) of the Rules of Court 2012 to strike out the respondents' statement of claim on the grounds that it was an abuse of the process of the court. It is contended by the appellants that, firstly, in law, the State Government of Selangor was not bound by the election manifesto; and, secondly, any claim against the State Government pursuant to the election manifesto is time barred by reason of s. 2(a) of the Public Authorities Protection Act 1948 which provides that any action against a public authority (and the State Government of Selangor is a public authority) must be made within 36 months of the default complained against.

[11] The learned High Court Judge dismissed the striking out application on the grounds, firstly, that the respondents have a reasonable cause of action against the appellants, the cause of action being that of legitimate expectation.

[12] The learned High Court Judge also held that the appellants are not protected by the Public Authorities Protection Act since it is only in September 2012 that the second appellant, in his capacity as the Menteri Besar of Selangor, announced that single mothers in the State of Selangor would not be given any single mother allowance. According to the learned High Court Judge, time began to run only from the date of the announcement.

A **[13]** In our judgment, the respondents' claim should have been struck-off by the High Court as being an abuse of the process of the court.

[14] We acknowledge that there is no Malaysian authority yet on
B the issue as to whether or not a Government is bound by an election manifesto. Yet we firmly believe – and we so hold – that it is a sound judicial policy to rule that a Government should not be bound by an election manifesto. A manifesto contains promises by a political party made during the election campaign period prior
C to an election in order to attract votes. They are not solemn promises or representations made by a Government. A political party and the Government are two different legal entities – and they remain so, notwithstanding that the political party that made the promise in its manifesto wins the election and eventually forms
D the Government. As we see it, the obligation to honour an election promise, must at best, be only a moral obligation: but nothing more than that.

[15] It is the law in the United Kingdom that a Government is
E not bound by an election manifesto. We propose to adopt the same principle. In *Bromley London Borough Council v. Greater London Council* [1982] 1 All ER 129, the facts are these. In May 1981 there was an election for the Greater London Council (GLC). Prior to the election, the Labour Party issued a manifesto. In it
F they promised that, if they won the election, they would within six months reduce the fares on London's buses and tubes by 25 per cent. The Labour Party won the election. They honoured their promise. They told the London Transport Executive to reduce the fares by 25 per cent. The London Transport Executive
G did as they were told. Within six months, on 4 October 1981, they reduced the fares by 25 per cent. The members of the public in London who regularly used public transport were delighted with the substantial cut in fares. But the ratepayers of London were not. They were required to contribute BPS69 million towards the
H implementation of the scheme. In order to enforce payment, the GLC made an order directed to all the 35 London boroughs directing them to raise the necessary funds. They were to do it by making a supplementary rate on all the ratepayers. The majority of the London boroughs obeyed the order. They made the
I supplementary rate and required their ratepayers to pay it. But

one London borough – the Bromley London Borough – challenged the validity of the whole procedure. They applied to the courts for an order of *certiorari* to quash the supplementary precept.

[16] The case was decided in the Court of Appeal and the House of Lords on the interpretation of the Transport (London) Act 1969. It was held that the Greater London Council had acted *ultra vires*.

[17] Lord Denning (MR), in delivering the judgment of the Court of Appeal, commented on the legal status of the manifesto as the GLC was of the view that they were legally committed to honour the election manifesto. Lord Denning said (at p. 135):

> In giving such weight to the manifesto, I think the majority of the council were under a complete misconception. A manifesto issued by a political party – in order to get votes – is not to be taken as gospel. It is not to be regarded as a bond, signed, sealed and delivered. It may contain – and often does contain – promises or proposals that are quite unworkable or impossible of attainment. Very few of the electorate read the manifesto in full. A goodly number only know of it from what they read in the newspapers or hear on television. Many know nothing whatever of what it contains. When they came to the polling booth, none of them vote for the manifesto. Certainly not for every promise or proposal in it. Some may be influenced by one proposal. Others by another. Many are not influenced by it at all. They vote for a party and not for a manifesto. I have no doubt that in this case many rate payers voted for the Labour Party even though, on this one item alone, it was against their interests. And *vice versa*. It seems to me that no party can or should claim a mandate and commitment for any one item in a long manifesto. When the party gets into power, it should consider any proposal or promise afresh – on its merits – without any feeling of being obliged to honour it or being committed to it. It should then consider what is best to do in the circumstances of the case and to do it if it is practicable and fair.

[18] The judgment of the Court of Appeal was upheld by the House of Lords. In the House of Lords, Lord Diplock said (at p. 165):

> In neither case when the time comes to play their part in performing the collective duty of the GLC to make choices of policy or action on particular matters, must members treat themselves as irrevocably bound to carry out pre-announced

A policies contained in election manifestos even though, by that time changes of circumstances have occurred that were unforeseen when those policies were announced and would add significantly to the disadvantages that would result from carrying them out.

B And Lord Brandon said (at p. 182):

It is, of course, entirely appropriate for a council, the majority of whose members have been elected after setting out a particular policy in their election manifesto, to take into account, and give considerable weight to, that circumstance when exercising their discretion in relation to that policy after they have been elected and come to power. It is, however, entirely wrong for such a majority to regard themselves as bound to exercise their discretion in relation to that policy in accordance with their election promises, whatever the cost and other countervailing considerations may turn out to be.

D **[19]** We wish to add here that on the facts of the present case it is clear to us that there is no room for the doctrine of legitimate expectation to be considered as in the first place it is not in dispute that there was never any representation made by the State E Government of Selangor.

[20] It is also our judgment in the present case that, due to the lateness in the filing of the writ, limitation has set in by reason of s. 2(a) of the Public Authorities Protection Act 1948. In any case, F it is not pleaded in the statement of claim, nor is there any evidence that the second appellant made an announcement in September 2012 to the effect that the State Government of Selangor would not be implementing any financial aid scheme for single mothers.

G Appeal allowed with costs (costs to be determined).

H

I